



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 311

Internal dispute resolution: Update to RG 165

May 2019

About this paper

This paper seeks feedback on our proposals to update our policy on the internal dispute resolution (IDR) requirements that apply to:

- Australian financial services (AFS) licensees;
- Australian credit licensees;
- unlicensed product issuers and secondary sellers;
- trustees of regulated superannuation funds (except for self-managed superannuation funds (SMSFs)), trustees of approved deposit funds and retirement savings account (RSA) providers (superannuation trustees);
- unlicensed carried over instrument lenders; and
- unlicensed financial technology businesses.

Note: Draft updated Regulatory Guide 165 *Internal dispute resolution* (draft updated RG 165) and draft *Internal dispute resolution data dictionary* (draft IDR data dictionary) are available on our website at www.asic.gov.au/cp under CP 311.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 15 May 2019 and is based on the legislation and regulations as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

We are consulting on the proposals in this paper until 9 August 2019. In addition to this consultation paper, we are conducting a series of stakeholder meetings, particularly in relation to the new internal dispute resolution (IDR) data reporting regime.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives. We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important to our update of [Regulatory Guide 165](#) *Licensing: Internal and external dispute resolution* (RG 165). Your comments will help us develop our policy on IDR requirements. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 9 August 2019 to:

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What will happen next?

Stage 1	15 May 2019	ASIC consultation paper released
Stage 2	May–August 2019	IDR stakeholder meetings
Stage 3	9 August 2019	Comments due on the consultation paper
Stage 4	December 2019	Revised regulatory guide and legislative instruments released

A Background to the proposals

Key points

ASIC is responsible for overseeing the operation of Australia's financial services dispute resolution framework, which includes:

- setting the standards and requirements for the internal dispute resolution (IDR) systems of financial firms; and
- oversight of the Australian Financial Complaints Authority (AFCA).

Our requirements for IDR processes are set out in [Regulatory Guide 165 Licensing: Internal and external dispute resolution](#) (RG 165).

The *Treasury Laws Amendment (Putting Customers First—Establishment of the Australian Financial Complaints Authority) Act 2018* (AFCA Act) significantly reshaped the Australian financial dispute resolution framework.

The AFCA Act established a single external dispute resolution (EDR) body, AFCA, to deal with all complaints about financial products and services. AFCA commenced operations on 1 November 2018.

All financial firms that are required to have AFCA membership (except for credit representatives and exempt special purpose funding entities (exempt SPFEs)) are also subject to important IDR reforms introduced by the AFCA Act and regulations.

We are proposing to update our existing IDR requirements in RG 165 to:

- align with the new statutory requirements for IDR;
- reflect the standards for effective complaints handling in [AS/NZS 10002:2014 Guidelines for complaint management in organizations](#) (AS/NZS 10002:2014); and
- refine our requirements in some key areas based on our experience in administering the policy.

Note: See the 'Key terms' in draft updated RG 165 for a list of terms and definitions used in this paper.

Financial services dispute resolution framework

- 1 IDR is the process within financial firms for accepting and dealing with consumer complaints. If a complaint is not resolved through a financial firm's IDR process, the complaint may be escalated to AFCA, the single EDR scheme for all complaints about financial products and services in Australia.
- 2 AFCA commenced operations on 1 November 2018 following reforms to the Australian financial dispute resolution framework introduced by the AFCA Act.

- 3 ASIC is responsible for overseeing the operation of Australia’s financial services dispute resolution framework, which includes:
- (a) setting the standards and requirements for the IDR processes of financial firms; and
 - (b) oversight of AFCA.
- 4 Our requirements for IDR processes are currently set out in [RG 165](#).

The importance of IDR

- 5 As the first step in the financial dispute resolution framework, IDR plays a vitally important role in the consumer protection framework. It provides an avenue for redress to millions of Australians who complain to a financial firm each year.
- 6 We consider that it is essential for consumers and small businesses to have access to transparent, fair and timely complaints processes when things go wrong.
- 7 While most financial firms have developed the foundational aspects of their IDR processes, we consider that more progress is needed in a number of key areas to create and maintain positive complaint management cultures that welcome complaints and focus on fair and timely consumer outcomes.
- 8 We recently commissioned independent research into the consumer experience of the IDR processes of financial firms: see [Report 603 *The consumer journey through the internal dispute resolution process of financial service providers*](#) (REP 603). This research found that:
- (a) while 17% of Australians considered making a complaint to a financial firm in the preceding 12 months, only 8% went on to lodge a complaint, with many non-lodgers reporting that they did not think it would make a difference or it was not worth their time;
 - (b) 18% of complainants dropped out or withdrew their complaint before it was concluded;
 - (c) the length of time taken by a financial firm to conclude a complaint significantly affected consumer satisfaction;
 - (d) one in seven complainants found it difficult to find the financial firm’s details to make a complaint;
 - (e) almost a quarter of complainants did not have the IDR process explained well at first contact and 27% were unsure how long they would have to wait for a decision; and
 - (f) only 45% of complainants who received an unfavourable outcome received an explanation from the financial firm of the decision made against them.

- 9 We are undertaking a number of workstreams seeking to raise IDR standards and capability across the financial services sector. Initiatives include:
- (a) the release of the consumer research in December 2018 (see [REP 603](#)) that explored and measured consumers' experience of IDR processes across the financial services sector;
 - (b) a program of onsite monitoring of the IDR arrangements at selected financial firms that commenced in November 2018. This forms part of ASIC's close and continuous monitoring program. We will incorporate the findings from these visits, along with feedback to this consultation, into the revised RG 165;
 - (c) a program of onsite visits to selected superannuation trustees to explore insurance complaints handling processes. The targeted program aims to identify common causes of lengthy resolution timeframes for complaints and/or poor claims management, as well as identify best practice models; and
 - (d) the introduction of mandatory IDR data reporting by financial firms to ASIC—a key reform introduced by the AFCA Act.

AFCA Act reforms relating to IDR

- 10 The AFCA Act implemented the Australian Government's response to the Ramsay Review, which was a comprehensive and independent review of the financial services dispute resolution and complaints handling framework. The Ramsay Review made 11 recommendations, all of which were accepted by the Government.

Note: See the Ramsay Review's [Final report: Review of the financial system external dispute resolution and complaints framework](#), April 2017 (Ramsay Review final report).

- 11 The AFCA Act's central reform was the establishment of AFCA to deal with complaints about financial products and services, including superannuation, that are not resolved at IDR.

- 12 The AFCA Act also introduced important reforms to IDR. These reforms:
- (a) make all financial firms that are required to have AFCA membership, or elect to join AFCA (except for credit representatives and exempt SPFEs), subject to ASIC's guidance on IDR set out in RG 165. This includes trustees of regulated superannuation funds (except for self-managed superannuation funds (SMSFs)), trustees of approved deposit funds and retirement savings account (RSA) providers (superannuation trustees);

Note: Trustees of an exempt public service superannuation scheme that is treated as a regulated superannuation fund for the purposes of s101 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) are also subject to the requirements in RG 165.

- (b) introduce a new requirement for all financial firms to report IDR data to ASIC in a standardised manner, as determined by ASIC in a legislative instrument;
- (c) give ASIC the power to publish financial firms' IDR data at both aggregate and firm level; and
- (d) require [AS/NZS 10002:2014](#) to be applied in RG 165 (the guidance in RG 165 is currently based on AS ISO 10002:2006 *Customer satisfaction: Guidelines for complaints handling in organizations*, which has been superseded).

Proposed updates to RG 165

- 13 We are proposing to update RG 165 to:
- (a) align our guidance with the legislative changes introduced by the AFCA Act;
 - (b) reflect the guidelines for effective complaint management in [AS/NZS 10002:2014](#); and
 - (c) refine elements of our previous guidance based on our experience in administering the requirements in RG 165.
- 14 Given the nature and extent of the IDR reforms, it has been necessary to substantively rewrite our previous guidance. The draft updated Regulatory Guide 165 *Internal dispute resolution* (draft updated RG 165) is attached to this paper: see Attachment 1.
- 15 We have also included the draft *Internal dispute resolution data dictionary* (draft IDR data dictionary) to help with our consultation on the introduction of the IDR data reporting regime: see Attachment 2.
- 16 A summary of the proposed changes to RG 165 is set out in Table 1.

Table 1: Summary of proposed updates to RG 165

Key changes to RG 165	Reference in draft updated RG 165
Expansion of IDR requirements to cover superannuation trustees	RG 165.1
Requirement for ASIC to take into account AS/NZS 10002:2014 in RG 165	RG 165.9(a)
Enforceability of RG 165	RG 165.11
New definition of 'complaint'	RG 165.28–RG 165.31 RG 165.55–RG 165.56

Key changes to RG 165	Reference in draft updated RG 165
Additional guidance about the definition of 'complaint' including social media complaints	RG 165.35–RG 165.37
Modification of definition of 'small business' in s761G of the <i>Corporations Act 2001</i> (Corporations Act) to align with broader AFCA definition	RG 165.38–RG 165.40
New requirement to record all complaints received, including those resolved immediately	RG 165.57
New requirement to record a unique identifier for each complaint received	RG 165.58
New requirement to record prescribed data for each complaint received	RG 165.61–RG 165.62
New requirements to report IDR data to ASIC in accordance with ASIC's requirements	RG 165.66
New requirements for acknowledging complaints	RG 165.69–RG 165.73
The term 'final response' changed to 'IDR response'	RG 165.74
IDR responses to meet new minimum content requirements	RG 165.74–RG 165.77
Reduced maximum timeframes for providing IDR responses	RG 165.78–RG 165.117
New requirements for complaints resolved within five business days	RG 165.84–RG 165.85
New requirements for determining whether a complaint has been resolved to a complainant's satisfaction	RG 165.87–RG 165.88
New requirements for identifying, escalating and reporting on systemic issues	RG 165.128–RG 165.133
New IDR standards (reflecting the requirements set out in AS/NZS 10002:2014)	RG 165.136–RG 165.211
Transitional arrangements	RG 165.212–RG 165.215
New concept of 'financial firm'	Key terms
New definition of 'IDR response'	Key terms

- 17 We are specifically seeking feedback on our approach in draft updated RG 165 that requires all financial firms to:
- (a) deal with all expressions of dissatisfaction that satisfy the [AS/NZS 10002:2014](#) definition of 'complaint' under their IDR processes;
 - (b) record all complaints received, including those resolved immediately at the first point of contact;

- (c) record a unique identifier and prescribed complaints data for each complaint received;
 - (d) report IDR data to ASIC in accordance with ASIC's requirements;
 - (e) provide IDR responses to complainants that satisfy our minimum content requirements;
 - (f) provide IDR responses to complainants within reduced maximum IDR timeframes; and
 - (g) identify and escalate possible systemic issues in accordance with ASIC's requirements.
- 18 We are also consulting on:
- (a) guiding principles for the publication of financial firms' IDR data by ASIC;
 - (b) our approach to the application of AS/NZS 10002:2014 in draft updated RG 165; and
 - (c) the transition periods that should apply to some of the new IDR requirements, including reporting IDR data to ASIC.
- 19 You may provide feedback on any other aspects of draft updated RG 165, but in doing so should consider that our approach to reviewing this guidance has been to align it with new legislative requirements and the standards for effective complaints management in [AS/NZS 10002:2014](#).
- 20 If you disagree with the policy proposals set out in this consultation paper, particularly around reduction of IDR timeframes and collection and recording of IDR data, evidence of your own IDR performance and experience will be required to persuasively support any counter position.
- 21 Our existing policy in RG 165 will remain in effect until the revised RG 165 is published.

Modifying the law

- 22 Once the policy settings are finalised, we intend to issue a legislative instrument that will have the effect of making the core IDR requirements set out in RG 165 enforceable.
- 23 We also intend to make the following modifications to the law when we publish the updated RG 165:
- (a) Currently, AFS licensees must *have* a dispute resolution system that includes an IDR process that complies with standards and requirements made or approved by ASIC: see s912A(1)(g)(i) of the Corporations Act. We intend to modify this provision to expressly require financial

services licensees to *have and comply with* IDR standards and requirements made or approved by ASIC. This would make it clear that it is not sufficient to merely have procedures in place to satisfy ASIC's IDR requirements. We will similarly seek to modify s1017G(1) of the Corporations Act and s47(1)(h) and (i) of the *National Consumer Credit Protection Act 2009*.

- (b) The definition of 'small business' in the Corporations Act affects whether a business is classified as a retail client or wholesale client for the purposes of Ch 7 and, in turn, whether a licensee's IDR process must cover the business. We intend to expand the required scope of IDR processes of licensees by modifying the small business definition in s761G(12), as it relates to IDR, to align it with the small business definition in the AFCA Rules: see proposal B3.

B Proposed updates to RG 165

Key points

We are seeking feedback on our proposed approach in draft updated RG 165 that requires financial firms to:

- deal with all expressions of dissatisfaction that satisfy the definition in AS/NZS 10002:2014 of ‘complaint’ under their IDR processes (see proposals B1 and B2);
- record all complaints received, including those resolved immediately at the first point of contact (see proposal B4);
- record a unique identifier and prescribed complaints data for each complaint received (see proposal B5);
- report IDR data to ASIC in accordance with ASIC’s requirements (see proposal B6);
- provide IDR responses to complainants that satisfy our minimum content requirements (see proposals B8–B9);
- provide IDR responses to complainants within reduced maximum IDR timeframes (see proposal B11); and
- identify and escalate possible systemic issues in accordance with ASIC’s requirements (see proposal B13).

We are also seeking feedback on:

- our update to the definition of ‘small business’ (see proposal B3);
- guiding principles for the publication of financial firms’ IDR data by ASIC (see proposal B7);
- our approach to the application of AS/NZS 10002:2014 in draft updated RG 165 (see proposal B14); and
- the transitional periods that should apply to some of the new IDR requirements, including reporting IDR data to ASIC (see proposal B15).

Definition of ‘complaint’—AS/NZS 10002:2014

Proposal

- B1** We propose to update RG 165 to require financial firms’ IDR processes to apply to complaints as defined in [AS/NZS 10002:2014](#). It sets out the following definition of ‘complaint’ at p. 6:

[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

The AS/NZS 10002:2014 definition expands the concept of ‘complaint’ to include expressions of dissatisfaction made ‘to or about’ an organisation. We consider that this should capture complaints made by identifiable consumers on a firm’s own social media platform(s).

Your feedback

B1Q1 Do you consider that complaints made through social media channels should be dealt with under IDR processes? If no, please provide reasons. Financial firms should explain:

- (a) how you currently deal with complaints made through social media channels; and
- (b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm’s own social media platform or an external platform.

Rationale

- 24 Under regs 7.6.02(1)(a) and 7.9.77(1)(a) of the Corporations Regulations 2001 and reg 10(1)(a) and item 2.20 of Sch 2 to the National Consumer Credit Protection Regulations 2010, ASIC must, when considering whether to make or approve standards or requirements relating to IDR, take into account:
- (a) [AS/NZS 10002:2014](#) (published by SAI Global Limited on 29 October 2014); and
 - (b) any other matter we consider relevant.
- 25 The definition of ‘complaint’ in the current version of RG 165 reflects the definition in AS ISO 10002:2006, which defines a complaint as:
- An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- 26 AS ISO 10002:2006 has been superseded by AS/NZS 10002:2014, which defines a ‘complaint’ as:
- [An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.
- 27 AS/NZS 10002:2014 retains the substance of the previous definition, but expands its application to include an expression of dissatisfaction:
- (a) made ‘about’ an organisation;
 - (b) related to an organisation’s staff; and
 - (c) where a response or resolution is legally required.

- 28 We consider that the expansion of the definition to include expressions of dissatisfaction about staff or where a response is legally required reflects current complaint management practices within the financial sector and, therefore, is unlikely to have a significant impact on firms.
- 29 The inclusion of expressions of dissatisfaction made ‘about’ an organisation does, however, mark an important development. By broadening the definition in this way, AS/NZS 10002:2014 establishes social media as a legitimate channel for making complaints. We consider this to be appropriate, given that long-established patterns in how consumers complain to organisations are changing significantly.
- 30 We consider that as consumers move beyond telephone, email and traditional written mediums, financial firms should:
- (a) adopt a proactive approach to identifying complaints made on their social media platform(s); and
 - (b) have processes in place (including appropriate links between media and complaints departments) to deal with these matters through their IDR process.
- 31 At a minimum, we expect that complaints made on a financial firm’s own social media platform(s) will be dealt with through the firm’s IDR process when the consumer is both identifiable and contactable.
- 32 Our own research into consumer experiences with financial services IDR processes (see [REP 603](#)) and consumer research conducted by the Central Bank of Ireland (see [Complaints handling within regulated financial services firms: Consumer research](#), May 2016) indicate that social media is being used by consumers as a complaints channel to financial firms.
- 33 In addition, more general consumer research in the Australian, UK and US markets strongly indicates that social media is being used by many consumers as a preferred channel for customer service interactions with organisations.

Note: For the Australian market, see Yellow, [Yellow social media report 2018: Part 1—Consumers](#), June 2018; for the UK market, see Ombudsman Services, [Consumer action monitor](#), March 2018; and for the US market, see Sprout Social, [Call-out culture: People, brands and the social media power struggle](#), 2017.

- 34 We note that a report recently published by the General Insurance Code Governance Committee, [How insurers handle consumer complaints](#) (January 2019), highlighted the need for the complaints made through social media to be captured and dealt with:

As technologies evolve and consumers change how they communicate with insurers, subscribers should adapt their complaint processes to ensure that all consumer complaints—including, for example, those expressed over social media—are captured and followed up (p. 13).

Definition of ‘complaint’—Additional guidance

Proposal

B2 We propose to introduce additional guidance in draft updated RG 165 to clarify:

- (a) the factors a financial firm should, and should not, consider when determining whether a matter raised by a consumer is a complaint; and
- (b) the point at which a complaint must be dealt with under a financial firm’s IDR process.

See draft updated RG 165 at RG 165.32–RG 165.37 at Attachment 1 to this paper.

Your feedback

B2Q1 Do you consider that the guidance in draft updated RG 165 on the definition of ‘complaint’ will assist financial firms to accurately identify complaints?

B2Q2 Is any additional guidance required about the definition of ‘complaint’? If yes, please provide:

- (a) details of any issues that require clarification; and
- (b) any other examples of ‘what is’ or ‘what is not’ a complaint that should be included in draft updated RG 165.

Rationale

- 35 We are aware, from our IDR onsite supervisory visits, that there is substantial variation between financial firms, and even between divisions within a single firm, on the interpretation of the term ‘complaint’.
- 36 There is a concerning practice of financial firms narrowing the application of the definition, including by:
- (a) requiring consumers to expressly state the word ‘complaint’ or lodge their complaint in written form;
 - (b) classifying complaints as ‘feedback’, ‘inquiries’ or ‘comments’ when the firm considers the matter does not have merit, or when a ‘goodwill payment’ is made to a complainant to resolve a matter without any admission of error; and
 - (c) only classifying and recording an expression of dissatisfaction as a ‘complaint’ when it is escalated to a specialist complaints team.
- 37 The Banking Code Compliance Monitoring Committee (CCMC) has recently highlighted deficiencies in the identification and recording of complaints in the banking sector. The CCMC’s report, [Compliance with the](#)

[Code of Banking Practice 2017–18](#) (PDF 718 KB), published November 2018, states:

There ... appears to be inconsistency in how banks interpret ‘expression of dissatisfaction’. Although most banks categorise all expressions of dissatisfaction as a complaint, some banks record such expressions as ‘feedback’ or ‘suggestions’, consequently excluding these from the data provided to the CCMC (p. 42).

38 In addition:

Most IDR breaches (84%) were due to a customer’s dissatisfaction not being recognised and logged as a complaint (p. 45).

39 It is our experience that the failure to accurately identify complaints is particularly prevalent when complaints are dealt with outside specialist complaints teams (e.g. by contact centre consultants or branch staff).

40 Consumer representatives have also raised concerns about the interaction between life and general insurance claims-handling and complaints processes, and the risk that consumers who are dealt with under financial hardship arrangements may have a concurrent complaint delayed or closed. Financial firms also appear to differ in whether they treat an objection to a decision about the distribution of superannuation death benefits as a complaint or not. Other concerns have been expressed about how and when a complaint is identified and lodged when it involves both a life insurer and a superannuation trustee. These are issues that we are seeking stakeholders’ views on during consultation.

41 Divergent approaches to the interpretation of ‘complaint’ lead to inconsistent identification and recording of complaints across the financial services sector. Consumers whose expressions of dissatisfaction are not recognised as complaints are not afforded the benefits of controls that are embedded in financial firms’ IDR processes, for, among other things:

- (a) compliance with regulatory requirements about maximum IDR timeframes and the provision of AFCA details;
- (b) escalation of unresolved complaints to specialist complaints teams; and
- (c) quality reviews of verbal and written communications responding to complaints.

42 We are also concerned about the impact current complaint identification practices could have on the integrity of data provided to ASIC under the IDR data reporting regime.

Definition of ‘small business’

Proposal

- B3** We propose to modify the definition of ‘small business’ in the Corporations Act to align it with the small business definition in the AFCA Rules:

A Primary Producer or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint.

Your feedback

- B3Q1** Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only? If not, you should provide evidence to show that this modification would have a materially negative impact.

Rationale

- 43 We consider that the definition of ‘small business’ should be harmonised for the purposes of the IDR and EDR provisions.
- 44 The AFCA definition was expressly endorsed, for EDR purposes, by the Minister for Revenue and Financial Services in the authorisation of AFCA on 1 May 2018.
- 45 Harmonising the definition in draft updated RG 165 with the AFCA definition would guarantee consistent dispute resolution access for small business complainants through both IDR and EDR.

Recording all complaints received

Proposal

- B4** We propose to update RG 165 to require financial firms to record all complaints, including those that are resolved to a complainant’s satisfaction at the first point of contact.

Note: Firms will not, however, be required to provide an IDR response for complaints resolved to a complainant’s satisfaction within five business days of receipt.

Your feedback

- B4Q1** Do you agree that firms should record all complaints that they receive? If not, please provide reasons.

Rationale

- 46 The current version of [RG 165](#) encourages, but does not require, financial firms to record complaints that are resolved to a complainant’s ‘complete satisfaction’ by the end of the fifth business day after the complaint or dispute was received.
- 47 The current version of RG 165 states at RG 165.80 that:
- ... where a complaint or dispute (except for a complaint or dispute relating to hardship, a declined insurance claim, or the value of an insurance claim) is resolved to the customer’s complete satisfaction *by the end of the fifth business day* after the complaint or dispute was received, you will not be required to apply the full IDR process—that is, to capture and record the complaint or dispute, as set out at Appendix 1 under ‘Section 8.1—Collection of information’.
- 48 The current version of RG 165 states at RG 165.81:
- Where possible, we encourage the adoption of the full IDR process, because having accurate and complete complaints and disputes data can be invaluable to improving products, services and business systems.
- 49 We consider that our guidance should be updated to require firms to record *all* complaints, regardless of the timeframe within which they are resolved. This will provide firms with a much deeper source of data to:
- (a) understand consumers’ needs and the key drivers of complaints;
 - (b) identify emerging issues; and
 - (c) optimise the consumer experience by informing product and service delivery improvements.
- Note: We are proposing a transition period for the commencement of this requirement: see proposal B15.
- 50 We also consider that this requirement will strengthen data integrity under the new mandatory IDR reporting regime. The removal of the discretion to record complaints resolved within five business days will promote greater consistency in data collection practices among financial firms and lead to more accurate and reliable IDR data being reported to ASIC.
- Note: See proposal B6 for details of our requirements for the IDR data reporting framework.
- 51 The CCMC’s report [Compliance with the Code of Banking Practice 2017–18](#) (PDF 718 KB) pointed to the need for a more consistent approach to the recording of complaints by the banking sector. The report states:
- ASIC’s RG 165 permits banks not to record complaints that are resolved to the customer’s complete satisfaction within five business days. This has led to divergent reporting approaches. Some banks capture and report all expressions of dissatisfaction received, regardless of how the complaint is received, the time taken to resolve it or ‘where a response or resolution is

explicitly or implicitly expected'. Other banks only report complaints that are not resolved immediately and require follow-up.

While both approaches meet the standard set out under RG 165, the variation does create inconsistencies in complaint resolution data (p. 42).

- 52 We consider that a substantial number of financial firms are already recording information on complaints that are resolved within five business days. Data reported on code compliance by the banking, customer owned banking and insurance broker sectors states that many financial firms that subscribe to these codes of practice are recording complaints resolved within five days, and, in some cases, are collecting detailed complaint information.

Note: For banking code compliance, see CCMC, [Own motion inquiry: Breach reporting](#) (PDF 56 KB), June 2018; for customer owned banking code compliance, see Customer Owned Banking Code Compliance Committee, [Annual compliance report 2017–18](#), December 2017; and for insurance broker code compliance, see Insurance Brokers Code Compliance Committee, [Our impact: Annual review 2017–18](#), August 2018.

- 53 Our existing policy setting exempts financial firms from the requirement to provide a 'final response' for complaints resolved to the complainant's complete satisfaction by the end of the fifth business day after receipt. This remains largely unchanged. However, we have:

- (a) changed the term 'final response' to 'IDR response' to align with long-standing terminology used by ASIC-approved EDR schemes, and now AFCA; and
- (b) removed references to 'the complainant's or disputant's complete satisfaction' (see the current version of [RG 165](#) at RG 165.80, RG 165.88, RG 165.91, RG 165.97 and RG 165.107), and replaced these references with clear guidance on what factors financial firms must take into account when considering whether a complaint has been resolved to a 'complainant's satisfaction' (see draft updated RG 165 at RG 165.87–RG 165.88 at Attachment 1 to this paper).

Recording a unique identifier and prescribed data set for all complaints received

Proposal

B5 To facilitate the effective operation of the IDR data reporting regime, we propose to require all financial firms to:

- (a) record an identifier or case reference number for each complaint received. The identifier must be unique to each complaint and not be reused by the financial firm (see draft updated RG 165 at RG 165.58 at Attachment 1 to this paper); and
- (b) collect and record a prescribed data set for each complaint received (see draft updated RG 165 at RG 165.61–RG 165.62 at

Attachment 1 and the IDR data dictionary at Attachment 2 to this paper).

Your feedback

- B5Q1 Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.
- B5Q2 Do you consider that the data set proposed in the data dictionary is appropriate? In particular:
- (a) Do the data elements for 'products and services line, category and type' cover all the products and services that your financial firm offers?
 - (b) Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail?

Rationale

- 54 The current version of [RG 165](#) does not require financial firms to record a unique identifier or specific data for complaints received. However, we are aware there is a widespread practice of assigning unique identifiers to complaints, and recording basic information, at least for complaints that remain unresolved after five business days.
- 55 We consider that our guidance should be updated to require financial firms to record a unique identifier or case reference number for each complaint received. The identifier must be unique to each complaint and not be reused.
- 56 Assigning a unique identifier will not only assist financial firms to identify and keep track of individual complaints, it will also:
- (a) minimise the duplication of complaints reported to ASIC under the IDR data reporting regime; and
 - (b) enable specific complaints to be identified by ASIC when conducting analysis of the data.
- Note: See proposal B6 for details of our requirements for the IDR data reporting framework.
- 57 We are also proposing that financial firms must record a series of data elements for each complaint received: see proposal B5(b). We provide details of these data elements in the draft IDR data dictionary in Attachment 2. The draft IDR data dictionary provides:
- (a) the name of each data element;
 - (b) a description of the data variable (i.e. what it means and/or includes);
 - (c) notes applicable to the data variable; and
 - (d) the code or reference data for each variable.
- 58 The elements in the draft IDR data dictionary represent the minimum data set we consider necessary for ASIC to:
- (a) understand the nature and volume of complaints made in the financial services sector;

- (b) track the end-to-end lifecycle of complaints, including progression to AFCA;
- (c) gain visibility of key IDR performance metrics; and
- (d) identify emerging trends and problems for ongoing surveillance and enforcement activities.

59 We consider that the setting of minimum requirements for the collection of complaints data will promote consistency in data collection practices among financial firms and lead to more accurate and reliable IDR data being reported to ASIC.

60 Our data collection requirements should also drive more financial firms to leverage the power of technology and data analytics to improve their IDR processes and the products and services they offer.

IDR data reporting

Proposal

- B6** We will issue a legislative instrument setting out our IDR data reporting requirements. We propose that all financial firms that are required to report IDR data to ASIC must:
- (a) for each complaint received, report against a set of prescribed data variables (set out in the draft IDR data dictionary available in Attachment 2). This includes a unique identifier and a summary of the complaint;
 - (b) provide IDR data reports to ASIC as unit record data (i.e. one row of data for each complaint);
 - (c) report to ASIC at six monthly intervals by the end of the calendar month following each reporting period; and
 - (d) lodge IDR data reports through the [ASIC Regulatory Portal](#) as comma-separated-value (CSV) files (25 MB maximum size).

Your feedback

- B6Q1** Do you agree with our proposed requirements for IDR data reporting? In particular:
- (a) Are the proposed data variables set out in the draft IDR data dictionary appropriate?
 - (b) Is the proposed maximum size of 25 MB for the CSV files adequate?
 - (c) When the status of an open complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status?

Rationale

- 61 The [Ramsay Review final report](#) recommended the introduction of a mandatory financial services and credit IDR data reporting regime, noting that transparency around IDR needs to be improved because there is ‘currently no comprehensive, consistent, comparable, publicly available IDR data’ (p. 186).
- 62 The Explanatory Memorandum to the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017 (AFCA Bill) states:
- This new reporting requirement is necessary to improve both the data that is collected and the format and reporting of IDR dispute data. Improved information will assist ASIC in monitoring trends, identifying emerging issues and determining regulatory priorities in the dispute resolution system ...
- Publishing such information will provide valuable information to consumers and drive firms to improve their IDR practices by increasing transparency about the performance of their firm relative to other firms (paragraph 2.9).
- 63 The AFCA Act established a mandatory IDR data reporting regime to improve the transparency of financial firms’ IDR activities and performance. The reporting of IDR data to ASIC on a recurring basis will also form part of a broader dataset used by ASIC to target ongoing surveillance and enforcement activities.
- 64 We expect that financial firms will submit reports to ASIC as unit record data—that is, one row of data per complaint for each reporting period. Unit record data will provide a detailed and holistic view of each complaint and enable ASIC to conduct rigorous and meaningful data analysis. The prescribed data variables set out in the draft IDR data dictionary will drive consistency in reporting across financial firms and ensure that the most salient IDR performance metrics are captured.
- 65 We are proposing a six-monthly reporting cycle to ensure that data is provided to ASIC in a timely manner, without placing undue administrative burden and cost on financial firms.
- 66 We have started to build the information technology (IT) infrastructure required for financial firms to lodge IDR data with ASIC. Further refinements are likely to occur after we have completed our consultation with industry and consumer groups.
- Note: We will also be working closely with AFCA to link IDR data reported by financial firms with EDR data provided by AFCA to enable a better understanding of the complete complaint lifecycle.
- 67 The [ASIC Regulatory Portal](#) will be the access point for financial firms to lodge their IDR reports. The portal provides digital access to a range of

ASIC regulatory services and has a number of benefits for financial firms that are required to submit IDR reports, including:

- (a) using information previously supplied by a financial firm to pre-fill fields;
- (b) tracking the status of reports;
- (c) ensuring data security through the use of a financial firm's own individual portal user account and password; and
- (d) enabling financial firms to define user access levels.

68 We consider that the CSV file format is the most appropriate for IDR reporting purposes because it is processed by almost all existing applications likely to be used by our diverse regulated population.

69 We will also offer an IDR data reporting form to smaller financial firms that receive only a few IDR complaints each reporting period to help them comply with our IDR data reporting requirements.

Guiding principles for the publication of IDR data

Proposal

B7 We propose to publish IDR data at both aggregate and firm level, in accordance with ASIC's powers under s1 of Sch 2 to the AFCA Act.

Your feedback

B7Q1 What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?

Rationale

70 We acknowledge there are diverse views about the publication of IDR data by ASIC, particularly the publication of identifying, firm level data. We are interested in hearing stakeholder views on what principles should guide our approach to the publication of IDR data.

71 We will conduct a separate, targeted consultation about our approach to the publication of IDR data. We will consult after the data reporting requirements have been finalised and before the first round of IDR data reports have been submitted to ASIC.

72 We are obtaining stakeholder views about the guiding principles for ASIC's publication of IDR data at this early stage to inform our planning for the targeted consultation and to help shape our consultation points.

IDR responses—Minimum content requirements

Proposal

- B8** We propose to set out new minimum requirements for the content of IDR responses: see draft updated RG 165 at RG 165.74–RG 165.77 in Attachment 1. When a financial firm rejects or partially rejects the complaint, the IDR response must clearly set out the reasons for the decision by:
- (a) identifying and addressing all the issues raised in the complaint;
 - (b) setting out the financial firms' finding on material questions of fact and referring to the information that supports those findings; and
 - (c) providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum.

Your feedback

B8Q1 Do you agree with our minimum content requirements for IDR responses? If not, why not?

Rationale

- 73 We are concerned that the quality of IDR responses provided to complainants across the financial services sector is generally poor, particularly when a complaint is rejected or partially rejected by a financial firm. Significant improvement needs to be made by firms to:
- (a) accurately identify and fully address the issues raised by the complainant; and
 - (b) provide clear and sufficiently detailed reasons for the decision reached about the complaint.
- 74 Our analysis of the research into consumer experiences with financial services IDR showed that less than half of complainants received a written explanation of the outcome of their complaint. But 70% of complainants who did not receive an explanation stated that getting an explanation in writing was important to them. Consumers can only assess the merits of escalating a complaint to AFCA if they receive adequate written reasons about why their complaint has been rejected.
- Note: See [REP 603](#) at p. 64.
- 75 The [2017–18 annual report of the General Insurance Code Governance Committee](#) found that breaches of the requirement to give written reasons for decisions increased 648% between 2016–17 and 2017–18.
- 76 Our IDR onsite visits have also revealed several instances of financial firms providing poor quality IDR responses to complainants, primarily due to the

overuse of template letters that are not sufficiently tailored to address the particular circumstances of individual complaints.

- 77 [Report 591](#) *Insurance in superannuation* (REP 591) explored the consumer experience of insurance in superannuation. This report also highlighted inadequate written reasons for complaint decisions being provided by trustees:

We are ... aware that trustees do not always provide adequate written reasons for complaint decisions, despite legal requirements to have arrangements in place to do so in certain circumstances. There are also clear benefits for members in understanding why a trustee made the decision it did (p. 6).

- 78 Our current regulatory guidance focuses primarily on the timeframes within which financial firms must provide IDR responses to complainants. We consider that additional requirements targeting content, particularly the provision of adequate reasons for complaint decisions, will lead to complainants being more informed and better placed to determine their next steps in relation to their complaint.

- 79 We are also aware that some financial firms require consumers to sign a deed of settlement when a complaint is closed at IDR. These deeds of settlement must comply with the requirements for settlement deeds issued by financial firms at AFCA: see [Regulatory Guide 267](#) *Oversight of the Australian Financial Complaints Authority* (RG 267) at RG 267.61.

IDR responses—Superannuation trustees

Proposal

- B9** We do not propose to issue a legislative instrument specifically addressing written reasons for complaint decisions made by superannuation trustees.

Your feedback

- B9Q1** Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, please provide reasons.

- B10** We propose to include the content of IDR responses as a core requirement for all financial firms, including superannuation trustees, in the legislative instrument making parts of RG 165 enforceable: see paragraph 22.

Your feedback

B10Q1 Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary.

Rationale

- 80 ASIC has the power to issue a legislative instrument that sets out requirements for written reasons for decisions about complaints made by superannuation trustees: see s101(1)(d) of the SIS Act and s47(1)(d) of the *Retirement Savings Account Act 1997* (RSA Act). However, we have decided not to do so.
- 81 The minimum content requirements for IDR responses in proposal B8 will apply to all financial firms, including superannuation trustees.
- 82 We consider that a separate legislative instrument, specifically addressing written reasons for complaint decisions made by superannuation trustees, is unnecessary.

Reduced maximum IDR timeframes**Proposal**

B11 We propose to:

- (a) reduce the maximum IDR timeframe for superannuation complaints and complaints about trustees providing traditional services from 90 days to 45 days;
- (b) reduce the maximum IDR timeframe for all other complaints (excluding credit complaints involving hardship notices and/or requests to postpone enforcement proceedings and default notices where the maximum timeframe is generally 21 days) from 45 days to 30 days; and
- (c) introduce a requirement that financial firms can issue IDR delay notifications in exceptional circumstances only.

Your feedback

B11Q1 Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide:

- (a) reasons and any proposals for alternative maximum IDR timeframes; and
- (b) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line.

B11Q2 We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints (other than the exceptions noted at B11(b) above). Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now?

Rationale

83 Timeliness is central to effective complaint management and ensuring good consumer outcomes. It is one key indicator of a firm's IDR performance.

84 An important measure of timeliness is the length taken to provide the complainant with a response to their complaint.

85 Currently, RG 165 provides that firms must provide a final response ('IDR response' in the draft updated RG 165) to a complainant within 45 days (the standard timeframe) unless a different timeframe applies. Superannuation trustees are required to have arrangements in place to respond to complaints within 90 days. A maximum IDR timeframe of 90 days also applies to complaints about traditional trustees.

Note: Different maximum IDR timeframes also apply to certain types of credit complaints, but these are not listed as we are maintaining these timeframes.

86 We consider that the 45-day standard timeframe and the 90-day timeframe for superannuation and traditional trustee complaints are too long and should be reduced to 30 days and 45 days respectively. We also want to ensure that these timeframes are not undermined by over-reliance on the use of IDR delay notifications.

87 Our consumer research found that complainants whose conclusion took longer than 45 days:

- (a) demonstrated significantly higher levels of dissatisfaction with the IDR process than complainants whose complaints were concluded within 45 days; and
- (b) experienced more stress throughout the process.

Note: See [REP 603](#) at pp. 61–62.

88 Recent industry code compliance reports indicate that reducing the maximum timeframes will not have a substantial operational impact on some financial firms. In the last reporting cycle, financial firms resolved:

- (a) 98% of banking complaints within 21 days;
- (b) 88% of customer-owned banking disputes within 21 days; and
- (c) 61% of insurance broker disputes within 21 days.

Note: For banking code compliance, see CCMC, [Own motion inquiry: Breach reporting](#) (PDF 567 KB), June 2018; for customer owned banking code compliance, see Customer Owned Banking Code Compliance Committee, [Annual compliance report 2017–18](#), December 2017; and for insurance broker code compliance, see Insurance Brokers Code Compliance Committee, [Our impact: Annual review 2017–18](#), August 2018

- 89 The [2017–18 report of the General Insurance Code Governance Committee](#) found that there had been a significant annual increase in breaches of the 45-day maximum timeframe (from 28 self-reported breaches in 2016–17 to 562 in 2017–18). The published data does not, however, assist us in understanding how individual insurers, or the sector more broadly, are performing against the timeframes.
- 90 Recent self-regulatory initiatives in the life insurance and superannuation sectors have also considered appropriate IDR maximum timeframes.
- 91 The [Financial Services Council Life Insurance Code of Practice \(LICP\)](#) states that subscribing firms will provide, where possible, a final response to a complaint about a life insurance policy within 45 calendar days: see clause 9.12. The LICP also states that when the complaint is about a life insurance policy owned by a superannuation fund trustee, the insurer will respond, where possible, to the trustee to enable it to respond within 90 days: see clause 9.10. These reflect current maximum timeframes.
- 92 The [Insurance in Superannuation Voluntary Code of Practice \(VCOP\)](#) states that subscribing superannuation funds will provide a final response in writing to a complainant within 45 calendar days and that, in exceptional cases where they will need more time to investigate, they will respond within 90 calendar days.
- 93 The proposals in this consultation paper seek to formalise the commitment made under the VCOP to reducing maximum timeframes for dealing with complaints about life insurance and superannuation, and to apply these maximum timeframes more broadly to all superannuation-related complaints.
- 94 All relevant industry codes will need to be consistent with the maximum IDR timeframes that are determined during this consultation.
- 95 We also note that where complaints are escalated to AFCA, financial firms are generally given another opportunity to resolve the complaint through the AFCA ‘refer back process’ (currently 21 days).
- 96 We consider that reducing the maximum IDR timeframes will drive greater efficiency within firms’ IDR processes and improve the consumer experience. This should result in fewer abandoned complaints. In the interest of regulatory neutrality, we also consider that we should be moving towards a single maximum IDR timeframe for all consumer and small business complaints.
- 97 When we issue the final RG 165, we will consider giving guidance on when financial firms that fail to meet the maximum IDR timeframes must submit a breach report to ASIC for failing to comply with s912A(1)(g)(i) of the Corporations Act.

Role of customer advocates

Proposal

B12 We propose to require customer advocates to comply with RG 165 (including meeting the maximum IDR timeframes and minimum content requirements for IDR responses) if they:

- (a) act as an escalation point for unresolved consumer complaints; or
- (b) have a formal role in making decisions on individual complaints.

Your feedback

B12Q1 Do you agree with our approach to the treatment of customer advocates under RG 165? If not, please provide reasons and any alternative proposals, including evidence of how customer advocates improve consumer outcomes at IDR.

B12Q2 Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position.

Rationale

- 98 Many financial firms employ a customer advocate (or similar) who may have a role in reviewing or advising on the operation of the firm's IDR processes, among other responsibilities. The specific role and function of a firm's customer advocate is not always transparent.
- 99 The Corporations Act prescribes an integrated two-step dispute resolution system that must be made available to consumers and small businesses—that is:
- (a) the financial firm's IDR processes (regulated under RG 165); and
 - (b) AFCA (authorised by the Minister and subject to oversight by ASIC).
- 100 In some models, the customer advocate reviews individual complaints that have not been resolved to the consumer's satisfaction by the financial firm's specialist complaints team. Some firms that operate these models consider that the work of the customer advocate is separate to the firm's IDR process and, therefore, does not need to comply with RG 165.
- 101 We are concerned these models may not be complying with RG 165 (including the maximum IDR timeframes and minimum content requirements for IDR responses) and that they can delay access by consumers to independent review by AFCA. We are particularly concerned that consumers may be confused, or even misled, about when they can take their complaint to AFCA from IDR (e.g. they believe that the customer advocate reviewing their complaint is a compulsory step in the process).

- 102 Our consumer research highlighted the impact that the length of time taken to resolve complaints has on consumer satisfaction: see [REP 603](#) at pp. 61–62. Complaint fatigue may lead to the withdrawal of complaints even where the consumer remains unsatisfied with the firm’s response.
- 103 We are seeking views on the customer advocate model described in paragraph 100. In our view, it is very difficult for consumers to make an informed decision about the relative benefits of proceeding to further internal review under a customer advocate model, as opposed to taking their complaint directly to AFCA.

Systemic issues

Proposal

B13 We propose to introduce new requirements on financial firms regarding systemic issue identification, escalation and analysis:

- (a) Boards and financial firm owners must set clear accountabilities for complaints handling functions, including setting thresholds for and processes around identifying systemic issues that arise from consumer complaints.
- (b) Reports to the board and executive committees must include metrics and analysis of consumer complaints including about any systemic issues that arise out of those complaints.
- (c) Financial firms must identify possible systemic issues from complaints by:
 - (i) requiring staff who record new complaints and/or manage complaints to consider whether each complaint involves potentially systemic issues;
 - (ii) regularly analysing complaint data sets; and
 - (iii) conducting root-cause analysis on recurring complaints and complaints that raise concerns about systemic issues.
- (d) Financial firm staff who handle complaints must promptly escalate possible systemic issues they identify to appropriate areas for action.
- (e) Financial firms must have processes and systems in place to ensure that systemic issue escalations are followed up and reported on internally in a timely manner.

See draft updated RG 165 at RG 165.128–RG 165.133 at Attachment 1 to this paper.

Your feedback

B13Q1 Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.

Rationale

- 104 Consumer complaints are a key risk indicator for conduct issues within a financial firm. They are also an important resource for financial firms, providing valuable insights into the performance and quality of products and services, and highlighting areas of actual or potential consumer harm.
- 105 We are proposing to require boards and financial firm owners to set thresholds for and processes around identifying systemic issues that arise from consumer complaints. To meet this requirement, financial firms must have a ‘systemic focus’ in order to identify and escalate complaints that affect, or have the potential to affect, more than one complainant.
- 106 We are concerned that many firms do not have the appropriate degree of systemic focus, and are not proactively using complaints data to find and fix systemic issues within their own organisations. For this reason, we have proposed that reporting to the board and/or executive committees must include metrics and analysis of consumer complaints, including a review of any systemic issues.
- 107 A number of systemic issues are being escalated to EDR schemes before they are identified and dealt with by financial firms. In 2017–18, the Financial Ombudsman Service identified 123 systemic issues (see Financial Ombudsman Service, [Annual review 2017–18](#), p. 122) and the Credit and Investments Ombudsman dealt with 63 systemic issues (see Credit and Investments Ombudsman, [Annual report on operations: 2017–18](#), p. 14). We consider that many of these matters could have been dealt with by the financial firms themselves if effective systemic-issue procedures and systems had been in place.
- 108 Our IDR onsite visits have also revealed limited and ineffective efforts to identify, escalate and resolve systemic issues arising from complaints.
- 109 We consider that compromised systemic risk identification is likely to have consequences for financial firms’ capacity to:
- (a) identify consumers who have suffered a loss and remediate them; and
 - (b) meet their breach reporting obligations under the Corporations Act.

IDR Standards

Proposal

B14 We propose to update our guidance to reflect the requirements for effective complaint management in AS/NZS 10002:2014: see Section F of draft updated RG 165.

Your feedback

B14Q1 Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons.

Rationale

- 110 We must, when considering whether to make or approve standards or requirements relating to IDR, take into account:
- (a) [AS/NZS 10002:2014](#) (published by SAI Global Limited on 29 October 2014); and
 - (b) any other matter we consider relevant.
- Note: See regs 7.6.02(1)(a) and 7.9.77(1)(a) of the Corporations Regulations 2001 and reg 10(1)(a) and item 2.20 of Sch 2 to the National Consumer Credit Protection Regulations 2010.
- 111 Our current guidance in RG 165 reflects AS ISO 10002:2006, which has been superseded by AS/NZS 10002:2014.
- 112 The IDR Standards in Section F of draft updated RG 165 reflect the requirements of AS/NZS 10002:2014.

Transitional arrangements for the new IDR requirements

Proposal

B15 We propose that financial firms must comply with the requirements set out in the draft updated RG 165 and supporting legislative instruments immediately on the publication of the updated RG 165, except for the requirements listed in Table 2.

Your feedback

B15Q1 Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your proposals for alternative implementation periods.

B15Q2 Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.

Table 2: Proposed transitional periods

Requirement	Reference in draft updated RG 165	Application date
To provide an IDR response to a complainant within reduced maximum IDR timeframes	RG 165.78– RG 165.117	31 March 2020
To record all complaints received by the financial firm, including those that have been resolved immediately	RG 165.57	30 June 2020

Requirement	Reference in draft updated RG 165	Application date
To assign a unique identifier for all complaints received by the financial firm	RG 165.58	30 June 2020
To record prescribed complaint data for every complaint received by the firm	RG 165.61– RG 165.62	30 June 2020
To report IDR data to ASIC in accordance with ASIC's data reporting requirements	RG 165.66	30 June 2021

Note: We expect to publish the revised RG 165 in December 2019.

Rationale

- 113 We acknowledge that some of the IDR reforms represent significant change for financial firms. Internal capacity building will be required to develop processes and systems and to upskill staff who are responsible for dealing with complaints.
- 114 We consider that the proposed transition periods set out in Table 2 are likely to be sufficient to enable financial firms to prepare for the new IDR requirements, while ensuring the key reforms are implemented in a timely manner.

C Regulatory and financial impact

- 115 In this paper, we are proposing to update our existing internal dispute resolution guidance to align with IDR reforms introduced by the AFCA Act.
- 116 Treasury prepared a Regulation Impact Statement (RIS) for the AFCA Bill: see Ch 5 of the [Revised Explanatory Memorandum to the AFCA Bill](#).

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to update RG 165 to require financial firms' IDR processes to apply to complaints as defined in AS/NZS 10002:2014. It sets out the following definition of 'complaint' at p. 6:</p> <p>[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>The AS/NZS 10002:2014 definition expands the concept of 'complaint' to include expressions of dissatisfaction made 'to or about' an organisation. We consider that this should capture complaints made by identifiable consumers on a firm's own social media platform(s).</p>	<p>B1Q1 Do you consider that complaints made through social media channels should be dealt with under IDR processes? If no, please provide reasons. Financial firms should explain:</p> <p>(a) how you currently deal with complaints made through social media channels; and</p> <p>(b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm's own social media platform or an external platform.</p>
<p>B2 We propose to introduce additional guidance in draft updated RG 165 to clarify:</p> <p>(a) the factors a financial firm should, and should not, consider when determining whether a matter raised by a consumer is a complaint; and</p> <p>(b) the point at which a complaint must be dealt with under a financial firm's IDR process.</p> <p>See draft updated RG 165 at RG 165.32–RG 165.37 at Attachment 1 to this paper.</p>	<p>B2Q1 Do you consider that the guidance in draft updated RG 165 on the definition of 'complaint' will assist financial firms to accurately identify complaints?</p> <p>B2Q2 Is any additional guidance required about the definition of 'complaint'? If yes, please provide:</p> <p>(a) details of any issues that require clarification; and</p> <p>(b) any other examples of 'what is' or 'what is not' a complaint that should be included in draft updated RG 165.</p>
<p>B3 We propose to modify the definition of 'small business' in the Corporations Act to align it with the small business definition in the AFCA Rules:</p> <p>A Primary Producer or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint.</p>	<p>B3Q1 Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only? If not, you should provide evidence to show that this modification would have a materially negative impact.</p>
<p>B4 We propose to update RG 165 to require financial firms to record all complaints, including those that are resolved to a complainant's satisfaction at the first point of contact.</p> <p>Note: Firms will not, however, be required to provide an IDR response for complaints resolved to a complainant's satisfaction within five business days of receipt.</p>	<p>B4Q1 Do you agree that firms should record all complaints that they receive? If not, please provide reasons.</p>

Proposal	Your feedback
<p>B5 To facilitate the effective operation of the IDR data reporting regime, we propose to require all financial firms to:</p> <ul style="list-style-type: none"> (a) record an identifier or case reference number for each complaint received. The identifier must be unique to each complaint and not be reused by the financial firm (see draft updated RG 165 at RG 165.58 at Attachment 1 to this paper); and (b) collect and record a prescribed data set for each complaint received (see draft updated RG 165 at RG 165.61–RG 165.62 at Attachment 1 and the IDR data dictionary at Attachment 2 to this paper). 	<p>B5Q1 Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.</p> <p>B5Q2 Do you consider that the data set proposed in the data dictionary is appropriate? In particular:</p> <ul style="list-style-type: none"> (a) Do the data elements for 'products and services line, category and type' cover all the products and services that your financial firm offers? (b) Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail?
<p>B6 We will issue a legislative instrument setting out our IDR data reporting requirements. We propose that all financial firms that are required to report IDR data to ASIC must:</p> <ul style="list-style-type: none"> (a) for each complaint received, report against a set of prescribed data variables (set out in the draft IDR data dictionary available in Attachment 2). This includes a unique identifier and a summary of the complaint; (b) provide IDR data reports to ASIC as unit record data (i.e. one row of data for each complaint); (c) report to ASIC at six monthly intervals by the end of the calendar month following each reporting period; and (d) lodge IDR data reports through the ASIC Regulatory Portal as comma-separated-value (CSV) files (25 MB maximum size). 	<p>B6Q1 Do you agree with our proposed requirements for IDR data reporting? In particular:</p> <ul style="list-style-type: none"> (a) Are the proposed data variables set out in the draft IDR data dictionary appropriate? (b) Is the proposed maximum size of 25 MB for the CSV files adequate? (c) When the status of an open complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status?
<p>B7 We propose to publish IDR data at both aggregate and firm level, in accordance with ASIC's powers under s1 of Sch 2 to the AFCA Act.</p>	<p>B7Q1 What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?</p>

Proposal	Your feedback
<p>B8 We propose to set out new minimum requirements for the content of IDR responses: see draft updated RG 165 at RG 165.74–RG 165.77 in Attachment 1. When a financial firm rejects or partially rejects the complaint, the IDR response must clearly set out the reasons for the decision by:</p> <ul style="list-style-type: none"> (a) identifying and addressing all the issues raised in the complaint; (b) setting out the financial firms' finding on material questions of fact and referring to the information that supports those findings; and (c) providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum. 	<p>B8Q1 Do you agree with our minimum content requirements for IDR responses? If not, why not?</p>
<p>B9 We do not propose to issue a legislative instrument specifically addressing written reasons for complaint decisions made by superannuation trustees.</p>	<p>B9Q1 Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, please provide reasons.</p>
<p>B10 We propose to include the content of IDR responses as a core requirement for all financial firms, including superannuation trustees, in the legislative instrument making parts of RG 165 enforceable: see paragraph 22.</p>	<p>B10Q1 Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary.</p>
<p>B11 We propose to:</p> <ul style="list-style-type: none"> (a) reduce the maximum IDR timeframe for superannuation complaints and complaints about trustees providing traditional services from 90 days to 45 days; (b) reduce the maximum IDR timeframe for all other complaints (excluding credit complaints involving hardship notices and/or requests to postpone enforcement proceedings and default notices where the maximum timeframe is generally 21 days) from 45 days to 30 days; and (c) introduce a requirement that financial firms can issue IDR delay notifications in exceptional circumstances only. 	<p>B11Q1 Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide:</p> <ul style="list-style-type: none"> (a) reasons and any proposals for alternative maximum IDR timeframes; and (b) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line. <p>B11Q2 We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints (other than the exceptions noted at B11(b) above). Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now?</p>

Proposal	Your feedback
<p>B12 We propose to require customer advocates to comply with RG 165 (including meeting the maximum IDR timeframes and minimum content requirements for IDR responses) if they:</p> <ul style="list-style-type: none"> (a) act as an escalation point for unresolved consumer complaints; or (b) have a formal role in making decisions on individual complaints. 	<p>B12Q1 Do you agree with our approach to the treatment of customer advocates under RG 165? If not, please provide reasons and any alternative proposals, including evidence of how customer advocates improve consumer outcomes at IDR.</p> <p>B12Q2 Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position.</p>
<p>B13 We propose to introduce new requirements on financial firms regarding systemic issue identification, escalation and analysis:</p> <ul style="list-style-type: none"> (a) Boards and financial firm owners must set clear accountabilities for complaints handling functions, including setting thresholds for and processes around identifying systemic issues that arise from consumer complaints. (b) Reports to the board and executive committees must include metrics and analysis of consumer complaints including about any systemic issues that arise out of those complaints. (c) Financial firms must identify possible systemic issues from complaints by: <ul style="list-style-type: none"> (i) requiring staff who record new complaints and/or manage complaints to consider whether each complaint involves potentially systemic issues; (ii) regularly analysing complaint data sets; and (iii) conducting root-cause analysis on recurring complaints and complaints that raise concerns about systemic issues. (d) Financial firm staff who handle complaints must promptly escalate possible systemic issues they identify to appropriate areas for action. (e) Financial firms must have processes and systems in place to ensure that systemic issue escalations are followed up and reported on internally in a timely manner. <p>See draft updated RG 165 at RG 165.128–RG 165.133 at Attachment 1 to this paper.</p>	<p>B13Q1 Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.</p>

Proposal	Your feedback
<p>B14 We propose to update our guidance to reflect the requirements for effective complaint management in AS/NZS 10002:2014: see Section F of draft updated RG 165.</p>	<p>B14Q1 Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons.</p>
<p>B15 We propose that financial firms must comply with the requirements set out in the draft updated RG 165 and supporting legislative instruments immediately on the publication of the updated RG 165, except for the requirements listed in Table 2.</p>	<p>B15Q1 Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your proposals for alternative implementation periods.</p> <p>B15Q2 Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.</p>